

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA**

<b>UNITED STATES OF AMERICA</b>	)
	)
<b>Plaintiff/Respondent,</b>	)
	)
<b>v.</b>	) <b>Case No. 03-CR-16-JHP</b>
	)
<b>SHAWN CHARLES KNUTSON</b>	)
	)
<b>Defendant/Petitioner.</b>	)

**ORDER**

Before the Court is a letter dated April 19, 2012, from Defendant/Petitioner Knutson. Defendant's Letter was addressed generally to the "Deputy Clerk, United States District Court."<sup>1</sup> Defendant/Petitioner's letter does not reference a specific case number, but cites a sentencing date of January 13, 2004.<sup>2</sup> Defendant has been sentenced in two separate cases in the Eastern District, 03-CR-16-JHP and 06-CR-66-JH. As the date cited in the Letter coincides with Defendant/Petitioner's sentencing in case number 03-CR-16-JHP, the Court considers the Letter in relation to that case.<sup>3</sup> The Court has characterized Defendant/Petitioner's Letter as a *pro se* Motion for Downward Departure and Motion for Appointment of Counsel.<sup>4</sup>

Defendant/Petitioner was charged with Mailing Threatening Communications, in violation of 18 U.S.C. §876.<sup>5</sup> On January 13, 2004, following entry of a guilty plea, this Court sentenced

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<sup>1</sup>Docket No. 21.

<sup>2</sup>*Id.*

<sup>3</sup>*Id.*

<sup>4</sup>See Docket No. 21.

<sup>5</sup>Judgment, Docket No. 20.

Defendant/Petitioner to 96 months' imprisonment.<sup>6</sup> Defendant/Petitioner neither directly appealed nor filed a motion pursuant to 28 U.S.C. §2255. In the instant letter, Defendant/Petitioner now states he "would like to move, and Filed A Motion Departure Downward From Sentencing Guidelines."<sup>7</sup> He moves pursuant to the duress provision of U.S.S.G. §5K2.12, citing his diminished capacity.<sup>8</sup> Defendant/Petitioner goes on to state that he believes he is eligible for the departure "do [sic] to my past mental health record." Defendant/Petitioner seeks an appointment of counsel to further assist him with this Motion and enclosed with his letter a financial affidavit and an account statement from the Inmate Financial Responsibility Program.<sup>9</sup>

The Court need not reach the prospective merits of Defendant/Petitioner's proposed Motion. "[A] district court does not have inherent authority to modify a previously imposed sentence; it may do so only pursuant to statutory authority."<sup>10</sup> Where a motion for sentencing reduction "is not a direct appeal or a collateral attack under 28 U.S.C. §2255, the viability of [the] motion depends entirely on [the applicability of] 18 U.S.C. §3582(c)."<sup>11</sup> Under Section 3582(c), a court may not modify a term of imprisonment once it has been imposed except in three limited circumstances:

First, upon motion of the Director of the Bureau of Prisons, a court may reduce the term of imprisonment if it finds special circumstances exist. Second, a court may modify a sentence if such modification is 'otherwise expressly permitted by statute

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<sup>6</sup>*Id.*

<sup>7</sup>Docket No. 21

<sup>8</sup>*Id.*

<sup>9</sup>*Id.*

<sup>10</sup>*United States v. Smartt*, 129 F.3d 539, 540 (10th Cir.1997) (quoting *United States v. Mendoza*, 118 F.3d 707, 709 (10th Cir. 1997)).

<sup>11</sup>*Smartt*, 129 F.3d at 540.

or by Rule 35 of the Federal Rules of Criminal Procedure.’ Finally, a court may modify a sentence if “a sentencing range . . . has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o).<sup>12</sup>

The sentence from which Defendant/Petitioner seeks a downward departure was imposed by this Court on January 13, 2004. Without some statutory authority, this Court is without jurisdiction to grant a departure. Defendant/Petitioner offers no statutory authority to support his position, and does not bring this motion either as a direct appeal of his sentence or as a collateral attack under 28 U.S.C. §2255. Lacking any other statutory authority, and outside the avenues of direct appeal and collateral attack, Defendant/Petitioner’s motion must be considered in light of 18 U.S.C. §3582(c).<sup>13</sup>

Defendant/Petitioner has not provided any motion from the Director of the Bureau of Prisons that would permit the Court to review his case for “special circumstances.” Further, Defendant/Petitioner has offered no allegations of “arithmetical, technical, or other clear error” or that his sentence was otherwise incorrect, and his motion is well after 14 days post-sentencing, therefore a Rule 35 analysis is inappropriate. Finally, Defendant/Petitioner has not alleged that he was sentenced under a Guidelines range that has subsequently been lowered by the Sentencing Commission.

Without a showing that one of the three §3582(c) factors apply, this Court is without jurisdiction to modify Defendant/Petitioner’s sentence. As this court is without jurisdiction to hear Defendant/Petitioner’s Motion for Downward Departure, the Motion must be **DENIED**. As Defendant/Petitioner has no prospect for relief on his proposed Motion, appointment of counsel is

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<sup>12</sup>*Smartt*, 129 F.3d at 540-541 (*internal citations omitted*).

<sup>13</sup>*See Smartt*, 129 F.3d at 540-541.

unwarranted at this time. Defendant/Petitioner's Motion for Appointment of Counsel is similarly  
**DENIED.**

**IT IS SO ORDERED this 27th day of April, 2012.**



James H. Payne  
United States District Judge  
Eastern District of Oklahoma